

NEAL R. FOSTER ET AL.

IBLA 84-276

Decided September 13, 1985

Appeal from decisions of the Fairbanks District Office, Bureau of Land Management, declaring mining claims abandoned and void. F-44949 through F-44955, F-45452 through F-45457, and F-45459 through F-45469.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Failure to file instruments required by 43 U.S.C. § 1744 (1982) and 43 CFR 3833.2 in the proper BLM office within the time prescribed constitutes abandonment of the mining claim.

2. Evidence: Presumptions -- Evidence: Sufficiency -- Rules of Practice: Evidence

The legal presumption that administrative officials have properly discharged their official duties and not lost legally significant documents filed with them may be rebutted by sufficient probative evidence that a particular document was not only transmitted but received by the proper office. When it is asserted that a particular document is one of multiple documents filed with BLM, proving receipt of some of the multiple documents does not prove receipt of the unaccounted-for document.

APPEARANCES: Neal R. Foster, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Neal R. Foster, individually and on behalf of his family, appeals the decisions of the Fairbanks District Office, Bureau of Land Management (BLM), dated January 17, January 19, and January 20, 1984, declaring 24 of the

Fosters' mining claims 1/ abandoned and void for failure to file evidence of assessment work or a notice of intention to hold the claims for 1982, as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982), and 43 CFR 3833.2.

[1] Section 314(a) of FLPMA requires the owner of an unpatented mining claim located on public land to file with the proper BLM office before December 31 of each year a proof of labor or notice of intention to hold the mining claim. 43 U.S.C. § 1744(a) (1982). Mining claims are deemed conclusively to be abandoned when the owner of the claims fails to meet the statutory deadline. 43 U.S.C. § 1744(c) (1982); United States v. Locke, 105 S. Ct. 1785 (1985); Charlene and Robert Schilling, 87 IBLA 52 (1985); John R. Wellborn, 87 IBLA 20 (1985).

Appellant argues in his January 21, 1984, statement of reasons that he did properly file the 1982 Affidavits of Annual Labor with BLM. Appellant states that "[d]uring the last 3-4 years, in view of constantly changing regulations and jurisdictions of the State and BLM, and with the advent of adjacent Native Land withdrawals and grants being finalized, I have personally filed our affidavits with both the State and BLM to better safeguard our claims." (Emphasis in original.)

Appellant argues that the original 1982 affidavits he filed with BLM were "misplaced in some sort of bureaucratic nightmare." He states that:

Regarding our 1982 Affidavit filed with the DR [District Recorder] 1 SEP 82, the DR stamped them and returned copies to

<u>1/ BLM Serial Number</u>	<u>Claim Name</u>	<u>Date of Posting</u>
F-44949	NWF Discovery No. 1 S	9/3/1966
F-44950	NWF Discovery	9/3/1966
F-44951	NWF Discovery No. 1 N	9/3/1966
F-44952	" " No. 1 W	9/24/1978
F-44953	" " No. 1 SE	9/24/1978
F-44954	" " No. 1 NE	9/24/1978
F-44955	" " No. 1 E	9/24/1978
F-45452	Iris Discovery	7/26/1960
F-45453	Iris Discovery No. 1 Below	7/26/1960
F-45454	Iris Discovery No. 2 Below	8/1/1960
F-45455	" " " 3 "	9/1/1960
F-45456	" " " 4 "	9/1/1960
F-45457	Richard Discovery	7/28/1958
F-45459	Richard's Discovery No. 2 Above	9/4/1968
F-45460	" " " 3 "	"
F-45461	" " " 4 "	"
F-45462	Richard's Discovery No. 1 Below	7/29/1958
F-45463	" " " 2 "	8/2/1958
F-45464	" " " 3 "	"
F-45465	" " " 4 "	6/8/1959
F-45466	" " " 5 "	6/8/1959
F-45467	" " " 6 "	"
F-45468	" " " 5 " South	7/11/1959
F-45469	" " " 6 " South	"

me in mid-OCT 82, which was the procedure at that time, and I immediately sent copies to BLM and the State, which the State received 19 OCT 82. In these packets, I sent copies of affidavits for other claims which were also filed with the DR 1 SEP 82 and filed simultaneously with all other claims. As you can see, BLM stamped them 16 NOV 82 and returned them to me ([Exhibit] D[2] being in the same area). However, BLM didn't send back certain copies stamped and thinking them lost in a paperwork shuffle, I didn't feel concerned until the State wrote 27 APR 83, saying I was misfiling them. In fact, I was double-filing them (BLM and State) and to make sure I sent an additional copy back to BLM at that time which you received 2 MAY 83. [Emphasis in original; references to other exhibits omitted.]

The record contains affidavits of annual labor for the subject claims, date stamped May 2, 1983, by BLM and October 19, 1982, by Alaska. These are, according to Foster, a second set of affidavits he sent to BLM. There are no copies of the first set of affidavits Foster purportedly mailed to BLM. Foster has also provided the Board with copies of affidavits of annual labor for mining claims which are located near the subject claims. These affidavits are date stamped November 16 and 17, 1982, by BLM and September 29, 1982, by the Nome recording district. Foster contends that the missing affidavits and the affidavits date stamped by BLM on November 16 and 17, 1982, "were all sent together, at the same time, in the same packet." Foster argues, therefore, that the affidavits of annual labor for the subject mining claims were received by BLM in November 1982, but have been misplaced.

[2] There is a legal presumption of regularity which supports the official acts of public officers in the proper discharge of their official duties. Cascade Energy and Metals Corp., 87 IBLA 113 (1985); James Boatman, 87 IBLA 31 (1985). It is presumed that BLM employees have properly discharged their duties and not lost or misplaced documents filed with them. Id.; R. E. Frasch, 69 IBLA 66 (1982); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). The presumption of regularity may be rebutted by sufficient probative evidence that the particular document in contention was not only transmitted but actually received by BLM. Glenn W. Gallagher, 66 IBLA 49 (1982).

Although appellant's explanation of the circumstances is credible he has failed to meet the evidentiary standard necessary to overcome the presumption of regularity attendant on government officials acting in their official capacity. In order to overcome the presumption of regularity, there must be convincing and uncontradicted evidence "which clearly and distinctly establishes a fact, so that reasonable minds can draw but one inference." (Emphasis added.) Cascade Energy and Metals Corp., supra at 116; John Walter Starks, 55 IBLA 266 (1981), appeal dismissed, Starks v. Watt, Civ. No. 81-0711 (C.D. Utah Mar. 2, 1982). See Wilson v. Hodel, 758 F.2d 1369, 1374 (10th Cir. 1985).

The copies of affidavits of annual labor date stamped by BLM on November 16 and 17, 1982, are probative evidence that BLM was in timely

receipt of affidavits of annual labor as to the mining claims listed on those affidavits. Those claims are not, however, subject of this appeal. The mere existence of affidavits of annual labor date stamped by BLM November 1982 does not prove that affidavits of annual labor for the subject mining claims were likewise submitted and received by BLM in a timely manner. While the affidavits date stamped November 1982 were timely received by BLM, there is no concrete evidence that the particular documents in question were among the documents filed with BLM in November 1982. Cascade Energy and Metals Corp., supra; S. H. Partners, 80 IBLA 153 (1984).

We cannot disregard the only clear evidence in the record concerning the time of receipt of the 1982 affidavits of annual labor -- the BLM date stamp of May 2, 1983. More than one inference can be drawn in this case and the presumption of regularity and the evidence of record supports the conclusion that the 1982 affidavits of annual labor as to the subject mining claims were not timely received by BLM.

Moreover, we note that the timely filing of proofs of labor in the Nome recording district office does not constitute compliance with the Federal recordation statute. Charlene and Robert Schilling, supra; John R. Wellborn, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

R. W. Mullen  
Administrative Judge

